United Nations S/2003/1118

Security Council

Distr.: General
24 November 2003

Original: English

Letter dated 21 November 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 6 June 2003 (S/2003/625).

The Counter-Terrorism Committee has received the attached third report from Malta submitted pursuant to paragraph 6 of resolution 1373 (2001).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

03-63215 (E) 081203

Annex

Letter dated 19 November 2003 from the Permanent Representative of Malta to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

Kindly refer to your communication dated 23 April 2003, and the enclosure attached therein concerning particularly a few outstanding questions. These queries refer specifically to:

(a) The licensing and registration of alternative money transfer agencies or services;

(b) Effective monitoring mechanisms for charitable organizations;

(c) The reporting of transactions suspected of being linked to terrorist activities;

(d) Progress on the ratification of the Vienna Convention on the Physical Protection of Nuclear Material.

In view of the above, I am forwarding herewith for your attention and any action you deem necessary the attached which was forwarded by the pertinent Maltese authorities in reply to the queries raised by the Counter-Terrorism Committee (see enclosure).

(*Signed*) Victor **Camilleri**
Permanent Representative

Enclosure

The Chairman of the CTC sub-Committee charged with the consideration of Malta's Second Report on the implementation Resolution 1373(2001) has forwarded to Malta's Permanent Representative in New York, a questionnaire regarding the aforementioned report.

The following queries were made:

- **Please confirm whether the obligation to report suspicious transactions relating to money laundering refer exclusively to suspected money laundering activities or if they also extend to transactions suspected of being linked to the financing of terrorism.**

In Malta's second report to the CTC, it was reported that the Prevention of Money Laundering Act, of 1994 (Ch.373 of the Laws of Malta), which is applicable to banks and to relevant financial businesses, provide rules and obligations which prevent persons carrying out relevant financial businesses for the purpose of money laundering.

The obligation to report, under this Act, is limited to suspicions of money laundering in line with international standards at the time. In order to report the financing of terrorism, which like in the case of reporting of suspicious money laundering activities, requires overriding bank secrecy and submitting such reports to the Financial Analysis Unit, then this requires a policy decision which would entail amending the Prevention of Money Laundering Act. Even though, in practice since the financing of terrorism is criminalized in Malta a suspicion of financing of terrorism is likely to be reported under current anti-money laundering legislation. Reporting institutions do not have the task to investigate and identify the underlying criminal offence, but just to report the criminal offence.

- **Effective implementation of paragraph 1 of the Resolution also requires an appropriate monitoring mechanism (involving for example registration and auditing requirements) to ensure that the funds collected by organizations, which have or claim to have charitable, social or cultural goals, are not diverted to purposes other than their stated purposes, in particular to the financing of terrorism. The CTC would appreciate receiving further information about the legal provision in place to deal with this aspect of the Resolution and an indication of the relevant provisions, which impose a monitoring mechanism on the organizations concerned.**

The regulation of the activities of charities resides in the administrative practice of the Inland Revenue Department and the Ministry of Finance. In fact the Income Tax Act of 1949, (Ch. 123 of the Laws Of Malta) is the principal legislation, which regulates such activities. This Act does not speak of "charities" but of *"any institution, trust, bequest or foundation, of a public character, and of any other similar organization or body of persons, also of a public character, which is engaged in philanthropic work and either qualifies for exemption...in accordance with rules made for this purpose by the Minister... or is named by the said Minister as engaged in philanthropic work...." [Art. 12(1)(e)].*

Philanthropic organizations are listed in a Legal Notice signed by the Minister of Finance after consultation with the Inland Revenue Department. These organizations enjoy an exemption from tax unless there is a declaration by the Minister to the contrary. In fact the Minister of Finance may, at any time, review the financial or activity operations of organizations granted exemption from taxation.

Also, independent professional accountants must audit annual financial statements of organizations with income exceeding US$ 1500. Information returns are required from all exempt organizations.

With regard to licensing requirements, according to the Public Collections Act (Chapter 279 Laws of Malta), all philanthropic collections require a license for the promotion thereof. Where such license is not issued, the collector is guilty of a criminal offence.

However, where the Minister is satisfied that a person pursues a charitable purpose in Malta and is desirous of promoting collections for that purpose, the Minister, may by order direct that he shall be exempt from the requirement of a license with respect to all collections for that purpose. This exemption may be revoked or varied by a subsequent order made by the Minister.

- **Please outline the legal provisions in Malta which regulate the alternative money transfer agencies or services (including licensing and registration) or in their absence, what steps does Malta intend taking in order to incorporate this aspect of the Resolution into its domestic law.**

The Financial Institutions Act and the *Malta Financial Services Authority Act* have specific provisions, which require persons or legal entities providing money remittance or transfer services to be licensed. Article 3 of the *Financial Institutions Act* states that *"No business of a financial institution shall be transacted in or from Malta except by a company which is in possession of a licence granted under this Act by the competent authority"*. The "competent authority" determines whether a particular activity constitutes the business of a financial institution. The above-mentioned licensing requisites also apply to forms of financial activities or value transfer systems and networks.

Financial Institutions are subject to the regulatory and supervisory regime of the MFSA. Furthermore, authorised institutions are subject to the obligations of the Regulations and therefore subject to further monitoring by the Financial Intelligence Analysis Unit of the Central Bank on compliance with their anti-money laundering obligations. Being subject to the provisions of the Financial Institutions Act and the Regulations, financial institutions are therefore also subject to the relevant administrative and other sanctions contemplated there-under for any breaches of their statutory and regulatory obligations.

Money remittance/transfer services, including informal money or value transfer systems are subject to key FATF recommendations applicable to banks and non-bank financial institutions. In fact, the *Prevention of Money Laundering Regulations* calls for the identification of the customer and recording of this information (Recommendation.10), the identification of the true identity of the person on whose behalf a transaction is conducted (Recommendation 11) maintenance of at least five years of records on transactions (Recommendation 12) and the requirement to report to competent authorities when it is suspected that funds involved stem from criminal activity (Recommendation 15).

Persons or entities under Maltese jurisdiction that conduct money transmission services, (including informal money transfer systems) without proper authorization may be subject to criminal or administrative actions. In fact, according to the *Financial Institutions Act*, a company, which conducts money transmission services without the necessary licence, is liable to criminal sanctions. Furthermore the *Prevention of Money Laundering Act* establishes criminal and administrative sanctions on failure to comply with the principles contained in FATF recommendations.

- **The CTC would appreciate receiving a progress report on the ratification by Malta of the Convention on the Physical Protection of Nuclear Material signed at Vienna on 3 March 1980.**

The instrument of accession of the Convention on the Physical Protection of Nuclear Material, was deposited on 16th October 2003, and the convention will enter into force for Malta on 15th November 2003.

By Commencement Notice published as L.N.119 of 2003, the Prime Minster established 19 May, 2003 as the date on which the provisions of the *Nuclear Safety and Radiation Protection Regulations, 2003* (published by Legal Notice 44 of 2003), shall come into force.

On 4th September 2003, there was the set up of the Radiation Protection Board. This Board will be responsible for the implementation of the obligations contained in this Convention.